

The Honorable Richard A. Jones
The Honorable James P. Donohue

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et. al.,

Defendants.

No. 2:16-cv-01655-RAJ-JPD

KING COUNTY DEFENDANTS'
RESPONSE TO PLAINTIFF'S
MOTION PURSUANT TO 42 CFR
§2.23 (DKT. 119)

Noted: October 6, 2017

I. RELIEF REQUESTED

Defendants King County, Gail Bonicalzi, and Melinda Hasegawa (King County Defendants) request the Court deny Plaintiff's Motion Pursuant to 42 CFR §2.23 (Dkt. 119).

II. FACTS RELEVANT TO MOTION

Plaintiff has filed an amended civil right complaint naming King County and Designated Mental Health Providers Gail Bonicalzi and Melinda Hasegawa. (Dkt. 38). Plaintiff alleges that King County Defendants violated his rights under the Fourth, Fifth and Eighth Amendments by having him civilly committed at Harborview Medical Center for 72 hours. (Dkt. 38).

III. ARGUMENT

Plaintiff Canty apparently seeks an apology and monetary damages from all defendants for an alleged violation of 42 CFR §2.23 as well as an order directing defendants to not gain illegal access to Plaintiff's medical records. Plaintiff Canty's motion is without merit for a

KING COUNTY DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION PURSUANT TO 42 CFR 2.23
(16-cv-01655-RAJ-JPD) - 1

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-8819

1 multitude of reasons. First, 42 CFR §2.23 does not apply to any of the defendants in this case as
 2 none of the defendants are “part 2 programs” that provide substance use diagnosis, treatment or
 3 referral for treatment under 42 CFR §2.11. Second, this statute does not prohibit defendants
 4 from obtaining mental health records, rather it allows for a patient to get access to their own
 5 substance abuse records. Third, this statute does not authorize a cause of action or remedy for an
 6 alleged violation for a third party obtaining records. Finally, as explained in the Fourth
 7 Declaration of Kanner (Dkt. 124, ¶3), the only access to Plaintiff’s medical records that King
 8 County Defendants and their counsel have are those that are a part of the Designated Mental
 9 Health Provider’s files and were created or used in the determination of his commitment under
 10 the Involuntary Treatment Act. There is nothing improper or untoward about King County
 11 Defendants sharing the records from a detention that is the subject of the suit with the attorney
 12 defending them in said suit. As such Plaintiff’s motion is frivolously made and should be denied
 in whole.

13 IV. CONCLUSION

14 For the foregoing reasons, King County Defendants request that Plaintiff’s motion be
 15 denied.

16 DATED this 29th day of September, 2017.

17 DANIEL T. SATTERBERG
 18 King County Prosecuting Attorney

19 By: /s/ Samantha D. Kanner
 20 SAMANTHA D. KANNER, WSBA #36943
 21 Senior Deputy Prosecuting Attorney
 22 Attorneys for King County Defendants
 500 Fourth Avenue, 9th Floor
 Seattle, WA 98104
 Telephone: (206) 296-8820
 E-Mail: Samantha.Kanner@kingcounty.gov

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 29, 2017, I electronically filed the foregoing document(s) along with the Proposed Order Denying Plaintiff's Motion with the Clerk of the Court using the CM/ECF E-Filing System, thus electronically serving counsel for City of Seattle Defendants, and notifying of such filing to the following:

Kyle Lydell Canty
DOC #401358
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584
DOCWCCInmateFederal@DOC1.WA.GOV

I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 29th day of September, 2017.

/s/Lindsey Macalalad
LINDSEY MACALALAD
Legal Secretary